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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Application Of Southern California Edison Company (U 338-E) For Approval Of Its Forecast 2017 ERRA Proceeding Revenue Requirement.	Application No. 16-05-001 (Filed May 2, 2016)

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) REPLY BRIEF REGARDING PCIA VINTAGING ISSUES

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I.

INTRODUCTION

Pursuant to California Public Utilities Commission (Commission or CPUC) Rule of Practice and Procedure 13.11 and Administrative Law Judge (ALJ) Miles' September 22, 2016, Ruling Modifying Procedural Schedule, Southern California Edison Company (SCE) respectfully submits this Reply Brief Regarding Power Charge Indifference Amount (PCIA) Vintaging Issues. The Opening Brief of the Alliance for Retail Energy Markets (AReM) and Direct Access Customer Coalition's (DACC) (collectively, DA Parties) was substantively similar to their August 19, 2016, withdrawn testimony in this proceeding. There, as here, the DA Parties rely almost exclusively on an out-of-context interpretation of one Commission decision from nearly a decade ago to attempt to avoid paying their fair share of Utility-Owned Generation (UOG) above-market costs through the PCIA. The DA Parties fail to adequately consider long-standing precedents that uphold the broad indifference principle, and do not seriously address the fact that the Commission has recently ruled that San Onofre Nuclear Generating Station

(SONGS) costs still belong in pre-2009 PCIA vintages. In addition, acceptance of the DA Parties' arguments would lead to unfair and irrational public policy results.

II.

PRE-2009 DEPARTING LOAD CUSTOMERS SHOULD REMAIN RESPONSIBLE FOR PCIA COSTS RELATED TO PRE-2009 RESOURCES

A. The DA Parties Do Not Place Decision (D.) 07-05-005 In Its Proper Context

D.07-05-005 was issued in response to questions raised in Pacific Gas and Electric's (PG&E) Petition to Modify (PTM) D.06-07-030: Should negative indifference amounts, as calculated using the Total Portfolio Indifference calculation, be carried over after a zero Cost Responsibility Surcharge (CRS) undercollection balance is reached, and should those "credits" ever result in a *payment* to departing load customers?[1] In response to those questions, the Commission held: 1) Once the CRS undercollection was fully recovered, negative indifference amounts would be tracked and be eligible to offset future positive amounts; and 2) Negative indifference amounts should not be "carried forward" to the extent that those amounts would produce a credit on customers' bills.[2]

At that time, PG&E's UOG was below-market, and the Commission affirmed its D.06-07-030 conclusion that, in order to maintain bundled service customer indifference, below-market UOG should be used to offset above-market Competition Transition Charge (CTC)-eligible and Department of Water Resources (DWR) power contracts, but only up to the amount of the above-market cost exposure. Any negative indifference amounts beyond that could then be used in future years to offset future above-market costs.[3] In light of this, and because the parties assumed UOG would continue to be below-market, it made sense in D.07-05-005 to link the "indifference requirement" to the expiration of the DWR contracts. In other words, there was little point in carrying over what were assumed at the time to be negative indifference amounts

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1 Specifically, PG&E sought reconciliation of Ordering Paragraphs 8 and 9 of D.06-07-030.
2 D.07-05-005 at pp. 19-20.
3 *See generally,* D.07-05-005 at pp. 18-20.

associated with UOG indefinitely, because the Commission had already determined departing load customers should not receive payments for leaving bundled service. The below-market UOG-related credits were only relevant to the extent that they could offset above-market DWR contract costs (*i.e.*, while those contracts were in effect). But now that certain UOG costs for SCE are above-market (indeed, SONGS is no longer generating and its costs are being recovered through a regulatory asset), the DA Parties' strained interpretation of D.07-05-005 is unfair and illogical.

B. PG&E's Omission Of A Pre-2009 Vintage PCIA Does Not Support The DA Parties' Argument

In light of the Commission's directives in D.06-07-030 and D.07-05-005, and consistent with the discussion above, PG&E did not include a pre-2009 vintage PCIA in its 2016 ERRA Forecast Application (A.15-06-001), and instead proposed to retire the negative indifference amount that had accrued for the pre-2009 vintage customers. However, the rationale behind PG&E's proposal was *not* solely predicated on the fact that its last DWR power contract had expired, but rather on the fact that the last DWR power contract had expired ***and*** a negative indifference amount of one billion dollars had accrued for the pre-2009 vintage.[4] [5] As the DA parties themselves note in their brief, "[because] a negative indifference amount associated with those pre-2009 DA customers was outstanding, its *disposition* was thus an issue."[6] The DA Parties' brief claims that "no party to A.15-06-001 opposed PG&E's ending the PCIA for pre-2009 Vintage DA customers." While that it true, the DA Parties omit the fact that they opposed PG&E's overall proposal (***after*** PG&E's DWR power contracts had all expired in 2015), and

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[4] *See generally*, PG&E's response to a Marin Clean Energy (MCE) data request included in Exhibit MCE-6 at 1 in A.05-06-001.

[5] In other words, PG&E's situation (no DWR power contracts and a negative indifference amount balance to carry-over) is the exact scenario contemplated by the Commission in D.07-05-005.

[6] Opening Brief at p. 6 (emphasis added).

characterized it as an attempt to "blithely [write] off" an accrued account balance.[7] They proposed that the Commission reexamine its current ban on a negative PCIA.[8] In other words, the DA Parties' argument is that the DWR contract expiration date that they accord so much weight to is not a cutoff of the concept of the indifference requirement *per se*, but rather a cutoff for positive indifference amount ***liabilities*** for DA customers, but not a cutoff for negative indifference amount ***credits*** for DA customers. They cannot have it both ways.

C. The Broader "Indifference Principle" Is Intended To Account For All Relevant Costs That Would Otherwise Result In Cost Shifting From Departing Load To Bundled Service Customers

Grasping at the three out-of-context sentences from D.07-05-005 about an "indifference requirement," the DA Parties urge the Commission to ignore its long-standing jurisprudence that protects bundled service customers from the cost-shifting consequences of departing load, a broad policy known as the "indifference principle." Simply put, the Commission has long recognized that "[t]he law permits the recovery of stranded costs from those customers who are responsible for stranded costs related to [all] resource and contractual commitments made by the IOU up until the time of the customer's departure."[9] As SCE described in its Opening Brief, the total portfolio indifference standard established by the Commission in D.02-11-022, as refined in D.06-07-030, D.08-09-012, and D.11-12-018, is consistent with that principle and ensures that ***all resources*** procured on behalf of a customer prior to their departure are accounted for in the determination of cost responsibility. The DA Parties' attempt to characterize the PCIA as merely a rate component that recovers the above-market costs of DWR power contracts (for pre-2009

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7 *See* pp. 7-8 of the Reply Brief of the Direct Access Customer Coalition and the Alliance for Retail Energy Markets in A.15-06-001, filed on October 1, 2015 and available at: http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K652/154652181.PDF.

8 *Id.* at p. 9.

9 D.08-09-012 at p. 59.

vintage customers), and new IOU procurement (for post-2009 vintage customers),[10] is an over-simplification of the Working Group[11] recommendations adopted by the Commission in D.06-07-030. The DA Parties' position ignores the indisputable fact that UOG in place prior to the 2001-01 California Energy Crisis is a "resource commitment" made by SCE on behalf of all customers (including all vintages of departing load).[12] The PCIA must recover the costs of ***all*** IOU resources excluded from the statutory definition of the CTC[13] — for pre-2009 customers, this includes DWR contracts (prior to their expiration) and UOG; for post-2009 customers, this includes DWR contracts (prior to their expiration), new procurement pursuant to D.04-12-048, and UOG.

D. The Adoption Of The DA Parties' Proposal Would Result In An Illogical And Unfair Result

As well as being inconsistent with precedent, the DA Parties' proposal is also illogical and unfair. Under the DA Parties' proposal to eliminate the PCIA for pre-2009 vintage DA customers, these customers will avoid paying for the above-market costs of pre-restructuring UOG resources (if any), while the post-2009 vintage DA customers will continue to pay for them. This outcome is inequitable. These UOG assets were built long before DWR contracts were entered into to serve both pre-2009 and post-2009 vintage DA customers (as well bundled service and other departing load customers), and their recovery through the PCIA from all customers responsible for them should have nothing to do with the expiration of the DWR contracts.

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10 Opening Brief at p. 3.

11 The DA Parties were active participants in the Working Group, and their recommendation to replace the DWR Power Charge with the residually-calculated PCIA (Indifference Rate less Ongoing CTC) ultimately served as the basis for the methodology adopted in D.06-07-030.

12 For example, SONGS Units 2 and 3 went into service in the early 1980s.

13 CTC-eligible resources are identified in Public Utilities Code 367(a) (1-6).

Furthermore, the DA Parties provide no policy reason[14] why ***post***-2009 vintage departing load customers should continue to pay for above-market costs of UOG, while ***pre***-2009 vintage departing load customers would be exempt from such responsibility, but instead rely on a single clause from D.08-09-012 to establish the basis for such a differentiation.[15] The DA Parties argue that:

> [T]he Commission had no reason to rule that the indifference obligation of the post-2009 DA customers (per D.04-12-048) continued "even after" the expiration of the DWR Contracts, unless the indifference obligation of the pre-2009 DA customers (per D.06-07-030) was different and did in fact expire with the end of the DWR Contracts. Accordingly, because the indifference obligation was different for the two vintages, the Commission was compelled to address the indifference obligation applicable to the post-2009 Vintage DA customers in D.08-09-012.[16]

This conclusion is unsupported by the discussion in D.08-09-012 immediately preceding the DA Parties' excerpt. The Commission was considering how to treat negative indifference amounts in light of new long-term IOU procurement. That procurement was not relevant to pre-2009 vintage customers, because it post-dated their departure. In D.08-09-012, therefore, the Commission needed to revisit the DWR expiration "cut-off" date for newer departing load customers, because it would not be fair limit the potential *benefit* of the carryover of negative indifference amounts associated with below-market UOG in light of the new procurement. This ruling did not establish two different indifference obligations for the two "types" of DA customers (pre- and post-2009), but instead ensured that they were subject to the *same* indifference standard by clarifying that negative indifference amounts could be carried over until there were no future positive indifference amounts to offset against.

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[14] The DA Parties are correct, of course, that as a matter of ***precedent*** there can be no dispute that post-2009 vintage departing load customers continue to remain responsible for UOG costs through the PCIA. DA Parties' Opening Brief at p. 9; *see also* D.08-09-012.

[15] The DA Parties cite to page 52 of D.08-09-012, which states that "However, with the inclusion of D.04-12-048 cost recovery as part of the total portfolio, the reasons cited in D.07-05-005, as discussed above as to why negative indifference charge carryover is appropriate, apply even after expiration of the DWR contract term."

[16] Opening Brief at pp. 9-10.

Finally, under the DA Parties' theory, pre-2009 vintage departing load customers will continue to receive the benefit of any ***below-market*** costs of certain pre-restructuring resources (which are recovered through the now-negative Competition Transition Charge (CTC)) but will avoid the ***above-market*** costs of other pre-restructuring resources (*i.e.*, UOG).[17] Despite the fact that those resources were built and procured in the same time period (*i.e.*, before restructuring), the DA parties provide no reasoning to support their claim for benefits from the below-market resources and exemptions from cost responsibility for the above-market resources.

E. The Commission Has Already Concluded That SONGS Should Remain In The PCIA For All Vintages

Devoting only four sentences in their Opening Brief to the issue, the DA Parties conclude with no meaningful analysis that "the Consensus Protocol [for SONGS costs] applies solely to post-2009 PCIA Vintage DA customers."[18] SCE's Opening Brief explained at length why that is incorrect. The DA Parties made a deal – twice[19] – agreeing to pay SONGS costs through the PCIA; and the Commission ratified that deal – twice[20] – through final decisions. The DA Parties should not be free to renege on that deal now.[21]

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17 The DA Parties concede that "pre-2009 vintage customers must continue paying the CTC." DA Parties' Opening Brief at p. 8. That "concession" is not surprising given that since 2013 those customers have been "paying" the ***negative*** CTC by getting credits against their bills. *See* September 29, 2016 Joint Stipulation Between Southern California Edison Company (U 338-E), The Alliance for Retail Energy Markets and Direct Access Customer Coalition, and City of Lancaster Regarding Undisputed Facts Supporting Power Charge Indifference Amount Vintaging Briefing at §7.

18 DA Parties' Opening Brief at p. 10.

19 First, the DA Parties were parties to the Consensus Protocol. Second, the DA Parties were parties to the Settlement Agreement in SCE's 2015 ERRA Forecast proceeding (A.14-06-011).

20 First, the Commission adopted the Consensus Protocol in D.14-05-022, which does not make any distinction between pre-2009 and post-2009 PCIA vintages. In fact, Exhibit A to the Consensus Protocol confirms that all PCIA vintages – both pre- and post-2009 vintages – should continue to pay the PCIA with SONGS's costs and refunds included. Second, in D.15-10-037 the Commission approved SCE's settlement agreement with the DA Parties in which they again explicitly acknowledged – and contractually agreed to be bound by—the concept that the PCIA should continue to include legacy UOG costs.

21 *See, e.g.*, D.14-05-002 at p. 13 (emphasis added). ("[T]he PCIA is intended to ensure that the departing load pays their fair share of the above-market portion of above market total portfolio costs

III.

CONCLUSION

The Commission should continue to uphold the indifference principle by holding that all departing load vintages remain subject to the PCIA.

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and to preserve bundled customer indifference. … [T]he PCIA is calculated on a total generation portfolio basis, by which the vintage of load assigned to a particular customer; and that the various cost factors are different for different vintages *because older vintages, such as 2001*, consist of a less diversified (and different) portfolio of generation resources.)